

GARY D. WILSON)	
Claimant)	
VS.)	
)	Docket No. 1,024,659
BRIERTON ENGINEERING, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE COMPANY)	
Insurance Carrier)	

The parties also agreed at oral argument that in the event temporary total disability benefits are payable for a K.S.A. 44-510d scheduled injury, claimant would be entitled to receive temporary total disability benefits for the left shoulder for the period from October 18, 2004, through January 12, 2005. The parties also agreed that any temporary total disability benefits that might be payable for the alleged bilateral carpal tunnel syndrome and trigger finger would be limited to the period from February 8, 2006, through December 8, 2006.

ISSUES

In this claim, claimant alleges at least two series of repetitive traumas. He first alleges he injured his left shoulder in a series of repetitive traumas ending on October 16, 2004. He next alleges he developed bilateral carpal tunnel syndrome and a right middle trigger finger injury in a series of traumas ending on August 1, 2005, which is the last day claimant worked for respondent. The parties agreed the appropriate date of accident for determining claimant's workers compensation benefits for the left shoulder injury was October 16, 2004. Likewise, the parties agreed the appropriate date of accident for determining claimant's workers compensation benefits for the bilateral carpal tunnel syndrome and right middle trigger finger injury was August 1, 2005.

In the June 12, 2007, Award, Judge Benedict granted claimant permanent disability benefits for a 15 percent impairment to the left shoulder, a five percent impairment to the left wrist, a five percent impairment to the right wrist, and a four percent impairment to the right middle finger. Moreover, the Judge held claimant was not entitled to receive any temporary total disability benefits for any of his injuries because those injuries were all compensable under the schedules of K.S.A. 44-510d. Finally, the Judge included a \$2,500 bonus that claimant received in December 2003 and, therefore, found claimant's average weekly wage was \$508.04 for the left shoulder injury. The Judge likewise included a \$3,500 bonus claimant received in December 2004 and determined claimant's average weekly wage was \$561.58 for the bilateral carpal tunnel syndrome and trigger finger injury.

Claimant contends Judge Benedict erred. In his brief filed with the Board, claimant argues he has a 20 percent impairment to the left upper extremity at the shoulder¹, a 10 percent impairment to the left upper extremity at the forearm level for carpal tunnel syndrome, and a 16 percent impairment to the right upper extremity at the forearm level for carpal tunnel syndrome and the trigger finger injury. Claimant also contends his average weekly wage for the left shoulder injury (which has the October 16, 2004, date of accident) should include the \$3,500 annual bonus he received in *December 2004*, which would make his average weekly wage \$527.27 for that injury.

Respondent also contends Judge Benedict erred. Respondent argues claimant should be denied benefits for the left carpal tunnel syndrome and left shoulder injury as those injuries are not related to his work. In the alternative, if those injuries are found compensable, respondent argues claimant has not sustained any functional impairment to his left shoulder and not more than five percent to each upper extremity for the bilateral

¹ At oral argument before the Board, claimant's attorney asked the Board to affirm the Judge's analysis and finding that claimant sustained a 15 percent impairment to his left upper extremity due to the left shoulder injury.

carpal tunnel syndrome and the trigger finger. In addition, respondent argues the bonus claimant was paid should not be included in the average weekly wage for the left shoulder claim because it was not discontinued during any period claimant would be entitled to receive disability benefits.

The parties agree the average weekly wage in the claim for the bilateral carpal tunnel syndrome and trigger finger injury is \$561.58. Moreover, the parties agree claimant's permanent disability benefits are to be determined under the schedules of K.S.A. 44-510d. Likewise, the parties agree respondent should receive a credit for any overpayment of temporary total disability benefits that may have occurred.

The issues before the Board in this appeal are:

1. Did claimant's left shoulder injury and left carpal tunnel syndrome arise out of and in the course of employment with respondent?
2. What is the functional impairment for the injuries that are compensable in this claim?
3. What is the average weekly wage for claimant's left shoulder injury?
4. Is claimant entitled to receive temporary total disability benefits?

The parties do not challenge the manner in which the Judge issued multiple awards to the same upper extremity. Consequently, that issue is not before the Board on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds:

In July 2000, claimant began working for respondent, which is a small machine shop, as a metal fabricator. Claimant handled heavy pieces of steel on a daily basis. The work entailed cutting steel with a torch or saw, drilling holes using a drill press, punching holes with a hammer, and using wrenches to assemble parts. Later, claimant operated computer-aided machines. As a CNC operator, claimant lifted steel parts and reached into the machines to load the parts for processing. Claimant's work required repetitive, forceful gripping and grasping of pieces of steel on a daily basis.

Before working for respondent, claimant had never experienced problems with either his left shoulder or hands. But in early 2003, before claimant became a CNC machinist,

claimant began experiencing left shoulder symptoms, which he attributed to lifting 20-foot sections of steel. Claimant reported his symptoms to respondent's general manager and was sent to the company doctor, Dr. J. Steven Schwarting. After a series of cortisone injections, claimant was referred to Dr. Alan L. Kruckemyer for medical treatment. Dr. Kruckemyer operated on claimant's left shoulder in early December 2004.

After recovering from the left shoulder surgery, claimant returned to work for respondent. Following about two weeks of working light duty, claimant returned to his job as a CNC machinist as he was released by Dr. Kruckemyer with no restrictions.

In the latter part of 2004, claimant developed symptoms in his right hand and shortly afterwards developed similar symptoms in his left hand. When he saw Dr. Kruckemyer in late 2004, claimant was having symptoms in both hands but at that time those symptoms were minor as compared to his left shoulder. When claimant recovered from his left shoulder surgery and returned to his regular job duties as a CNC machinist, his hand symptoms increased to the point his right middle finger began locking in a fixed position. As claimant continued to work, his hand symptoms worsened. On August 1, 2005, claimant reported the symptoms to his supervisor, who told claimant to make an appointment with Dr. Schwarting. But the doctor refused to see claimant. It was at this time respondent terminated claimant. Consequently, August 1, 2005, was the last day claimant worked for respondent.

In January 2006, Dr. Phillip L. Baker examined claimant at respondent's request. Dr. Baker, who is board-certified in orthopedics and disability evaluations, maintains a medical practice that principally consists of providing medical examinations for insurance companies. According to Dr. Baker, claimant was primarily complaining about symptoms of intermittent numbness and swelling in his hands and forearms that had started in September 2004. The doctor found claimant had a slight reduction of range of motion in his left shoulder, thenar atrophy in his right hand, and a slightly positive Tinel's sign in his right hand. And the Phalen's test produced moderate discomfort in both hands. The doctor also found claimant's right middle finger did not fully flex and that claimant had reduced grip strength in both hands. But the doctor found claimant had normal sensation in his fingertips. In short, Dr. Baker thought claimant may have had carpal tunnel syndrome in his right wrist and, therefore, the doctor recommended a nerve conduction test.

Claimant underwent those recommended nerve conduction studies in February 2006. The report generated relative to those tests indicated claimant had mild bilateral carpal tunnel syndrome. But Dr. Baker reviewed the studies and concluded the results were essentially normal and that claimant did not have carpal tunnel syndrome in either arm.

Claimant eventually obtained medical treatment for his hands from Dr. Prince T. Chan. In May 2006, claimant first consulted with Dr. Chan and in June 2006 claimant underwent a right carpal tunnel release and a release of his right middle trigger finger. On August 14, 2006, the doctor released claimant from further medical treatment of his right hand and without restrictions. In late October 2006, Dr. Chan performed a left carpal tunnel release. On December 8, 2006, Dr. Chan released claimant from further medical treatment of his left hand and without restrictions. During his treatment with Dr. Chan, claimant advised the doctor that his hand symptoms started to worsen in September 2004.

At the March 2007 regular hearing, claimant testified he had a significant loss of strength and motion in his left shoulder. He also testified both his hands continued to swell, the right worse than the left. Claimant is able to lift his left arm above his head, but that movement causes pain.

The parties agree the date of accident for purposes of determining any workers compensation benefits for claimant's left shoulder injury is October 16, 2004, which was claimant's last day of work before undergoing shoulder surgery. Likewise, the parties agree claimant was unable to work as a result of that injury from October 18, 2004, through January 12, 2005.

Likewise, the parties agree the date of accident for claimant's bilateral carpal tunnel syndrome and his right trigger finger injury is August 1, 2005, which was the last day claimant worked for respondent. Moreover, the parties agreed claimant was unable to work due to those injuries from February 8, 2006, through December 8, 2006.

Average weekly wage

The parties agree claimant's average weekly wage for the bilateral carpal tunnel syndrome and trigger finger injury claim is \$561.58. But the parties cannot agree upon the average weekly wage for the left shoulder injury. The parties agree claimant was earning \$11.00 per hour on October 16, 2004, and that he regularly worked 40 hours per week. Respondent, however, contends claimant's average weekly overtime in the 26 weeks preceding the October 2004 accident date was \$29.51.² But claimant contends he received average weekly overtime earnings for that same period of \$19.96.³ Moreover, in December 2003 claimant received a \$2,500 bonus and in December 2004 he received a \$3,500 bonus.

² Respondent's Brief at 20 (filed Aug. 13, 2007).

³ Claimant's Submission Brief to Judge Benedict at 4 (filed July 16, 2007).

Based upon the earnings records introduced at the deposition of Mike Brierton, the Board finds claimant received \$767.25 in overtime earnings in the 26-week period preceding October 16, 2004. Therefore, claimant's average overtime earnings for the alleged left shoulder injury are \$29.51.

Claimant requests that his bonus should also be included when calculating the average weekly wage for the left shoulder injury. The Workers Compensation Act, however, provides that bonuses are additional compensation, which are not included in a worker's average weekly wage until it is discontinued. The Act reads:

(2) The term "additional compensation" shall include and mean only the following: . . . (B) any cash bonuses paid by the employer within one year prior to the date of the accident, for which the average weekly value shall be determined by averaging all such bonuses over the period of time employed prior to the date of the accident, not to exceed 52 weeks. . . . Additional compensation shall not include the value of such remuneration until and unless such remuneration is discontinued. If such remuneration is discontinued subsequent to a computation of average gross weekly wages under this section, there shall be a recomputation to include such discontinued remuneration.⁴

Claimant received a \$3,500 bonus in December 2004. Accordingly, claimant's bonuses were not discontinued through that date. Indeed, it cannot be said that claimant's bonuses were discontinued until his termination in August 2005. In conclusion, claimant's average weekly wage for the October 16, 2004, shoulder injury is \$469.51, until August 2005, when the \$2,500 bonus paid in December 2003 would increase claimant's average weekly wage to \$517.59.

The relationship of claimant's injuries to his work and the resulting functional impairment

Several doctors testified about the extent of claimant's functional impairment and the relationship of claimant's injuries to the work he performed for respondent as a metal fabricator and CNC machine operator.

Dr. Kruckemyer, the board-certified orthopedic surgeon who operated on claimant's left shoulder, testified he began treating claimant in July 2003 for shoulder joint pain, which the doctor initially attributed to wear and tear. During the December 2004 left shoulder surgery, in which the doctor resected claimant's distal clavicle, the doctor found claimant's shoulder was quite worn and arthritic. On January 24, 2005, the doctor released claimant to return to work without restrictions but with instructions to increase his activities as

⁴ K.S.A. 2004 Supp. 44-511(a).

tolerated. Dr. Kruckemyer does not have an opinion whether claimant's work activities caused the shoulder condition. But the doctor does acknowledge the type of work claimant performed for respondent could aggravate a degenerative shoulder condition.

When Dr. Kruckemyer last examined claimant in April 2005, the doctor concluded claimant had full range of motion in his left shoulder. Consequently, the doctor initially testified claimant had no permanent impairment from his shoulder despite the fact claimant still had some weakness and loss of muscle mass at his last appointment. The doctor testified, in part:

I felt, with the absence of pain and the full range of motion of the shoulder and the fact he had returned -- he was back to full activity at work without restrictions, I did not feel he had any kind of impairment to the shoulder.⁵

According to Dr. Kruckemyer, his initial opinion that claimant had no impairment from his shoulder injury and surgery was based upon the fourth edition of the *AMA Guides*⁶. But upon cross-examination, Dr. Kruckemyer acknowledged he was not familiar with a particular chart from the *Guides* that indicated a distal clavicle resection warranted a 10 percent impairment to the upper extremity nor did he realize the *Guides* provided that the impairment from the resection should be combined with the resulting impairment for the loss of motion in the shoulder.

Dr. Kruckemyer also testified claimant did not complain of any carpal tunnel syndrome symptoms in his hands while the doctor was treating his left shoulder. But the doctor acknowledged claimant had been sent to him for evaluation of the left shoulder only.

Dr. Baker, who examined claimant only on one occasion, felt claimant did not have carpal tunnel syndrome in either arm when he evaluated claimant in January 2006. Dr. Baker specifically rejected the conclusion from the nerve conduction study that claimant had mild bilateral carpal tunnel syndrome. Moreover, the doctor further concluded that if claimant later developed carpal tunnel syndrome, it was not related to the work claimant performed for respondent. Indeed, Dr. Baker opined the bilateral carpal tunnel releases that claimant later received were unwarranted.

On the other hand, Dr. Chan, the orthopedic specialist who performed claimant's bilateral carpal tunnel releases and trigger finger release, linked claimant's bilateral carpal tunnel syndrome to repetitive use at work. Dr. Chan believed claimant developed the bilateral carpal tunnel syndrome when repetitive use aggravated a preexisting condition.

⁵ Kruckemyer Depo. at 13.

⁶ American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Allegedly using the fourth edition of the *AMA Guides*, the doctor rated claimant as having a five percent left upper extremity impairment and a five percent right upper extremity impairment. The doctor explained he used the *Guides* as merely a guide in rating claimant. But Dr. Chan acknowledged there is a table in the *Guides* that rates the upper extremity at 10 percent for mild carpal tunnel syndrome, which he diagnosed claimant as having.

Finally, board-certified orthopedic surgeon Dr. C. Reiff Brown testified. Dr. Brown was hired by claimant's attorney to evaluate claimant for purposes of this claim. The doctor examined claimant in early January 2007 and diagnosed rotator cuff tendinitis and acromial impingement syndrome in the left shoulder, along with bilateral carpal tunnel syndrome and stenosing tenosynovitis of the flexor tendon of the right middle finger. Dr. Brown concluded the work claimant performed for respondent caused the overuse syndromes and injuries claimant had sustained.

Using the fourth edition of the *AMA Guides*, Dr. Brown rated claimant as having a five percent impairment to the left upper extremity for lost motion in the shoulder, six percent impairment to the left upper extremity for crepitus in the shoulder, and an additional 10 percent to the left upper extremity for the resected distal clavicle. The doctor also determined claimant had a 10 percent impairment to the left upper extremity for the residuals from carpal tunnel syndrome. Combining all of those impairment percentages, the doctor concluded claimant had sustained a 28 percent permanent impairment to the left upper extremity. Dr. Brown admitted, however, that the *Guides* indicate he should not have included the six percent rating for the crepitus.

For the right upper extremity, Dr. Brown concluded claimant sustained a 10 percent impairment for the residuals from the carpal tunnel syndrome, a five percent impairment for loss of strength, and a four percent impairment for the stenosing tenosynovitis of the middle finger, all of which combined for an 18 percent impairment to that extremity.

The Board affirms the finding of Judge Benedict that claimant injured his left shoulder as a result of the work he performed for respondent. Likewise, the Board affirms the Judge's finding that claimant developed left carpal tunnel syndrome due to that work. Claimant's testimony is credible as to how his left shoulder symptoms developed, which he attributed to lifting sections of steel. In addition, claimant's testimony is credible about how the symptoms in his hands began in 2004 and later worsened when he returned to work in January 2005 following his left shoulder surgery. Dr. Baker's testimony that claimant did not have carpal tunnel syndrome in January 2006 is not convincing in light of the other evidence presented in this claim.

The Board affirms the Judge's finding that claimant sustained a 15 percent impairment to his left upper extremity due to the shoulder injury. That rating is supported by Dr. Brown's testimony, when the percentage for crepitus is appropriately disregarded.

Consequently, claimant is entitled to receive permanent disability benefits for a 15 percent impairment to the left upper extremity at the shoulder level under the schedules of K.S.A. 44-510d.

The Judge found claimant sustained a five percent impairment to each upper extremity due to the carpal tunnel syndrome. But the Board is persuaded that claimant has sustained a 10 percent impairment to each upper extremity due to those injuries. The Workers Compensation Act requires impairment to be measured by the fourth edition of the *AMA Guides*, "if the impairment is contained therein."⁷ And the doctors seem to agree that under the *Guides* mild residual carpal tunnel symptoms warrant a 10 percent impairment to the upper extremity. The evidence establishes that claimant continues to experience mild residuals from the bilateral carpal tunnel syndrome as indicated by the various medical examinations and his testimony. Accordingly, the Board finds claimant has sustained a 10 percent right upper extremity impairment and a 10 percent left upper extremity impairment due to the bilateral carpal tunnel syndrome. Consequently, the June 12, 2007, Award should be modified in that respect.

Judge Benedict also found claimant sustained a four percent impairment to the right middle finger. As neither party has challenged that finding, the Board affirms that part of the June 12, 2007, Award.

Temporary total disability benefits

Respondent requested the Judge to find it was entitled to credits of \$83.82 and \$419.08 to be applied against claimant's permanent disability benefits as it had overpaid the temporary total disability benefits due claimant. The Judge, however, determined that claimant was not entitled to receive any temporary total disability benefits as injured workers are not entitled to such benefits when they have sustained a scheduled injury under K.S.A. 44-510d. On appeal, respondent has expanded its request for a credit for the overpayment of temporary total disability benefits. Respondent now contends no temporary total disability benefits were payable and, therefore, respondent asserts it is entitled to receive a credit against claimant's permanent disability benefits for all of the temporary total disability benefits that it paid.

The temporary total disability statute, K.S.A. 44-510c, does not specifically address the issue now before us. But that statute does state that permanent disability benefits under K.S.A. 44-510d may be paid following a period of temporary total disability.

⁷ K.S.A. 44-510d(a)(23).

(c) When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e and amendments thereto.⁸

K.S.A. 44-510d reads, in part:

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 $\frac{2}{3}$ % of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

. . . .

(21) Permanent loss of the use of a finger, thumb, hand, shoulder, arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight of an eye or the hearing of an ear, shall be equivalent to the loss thereof. For the permanent partial loss of the use of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, compensation shall be paid as provided for in K.S.A. 44-510c and amendments thereto, per week during that proportion of the number of weeks in the foregoing schedule provided for the loss of such finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, which partial loss thereof bears to the total loss of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear; but in no event shall the compensation payable hereunder for such partial loss exceed the compensation payable under the schedule for the total loss of such finger, thumb, hand, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, exclusive of the healing period. As used in this paragraph (21), "shoulder" means the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures.

. . . .

⁸ K.S.A. 44-510c.

(b) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

On its face, K.S.A. 44-510d(a) indicates temporary total disability benefits may be paid relative to a scheduled injury.

In addition, Kansas Administrative Regulations (K.A.R.) 51-7-8 sets forth how temporary total disability benefits are to be deducted when determining an award of permanent disability benefits for a scheduled injury.

It is acknowledged the language of K.S.A. 44-510d(b) appears to indicate temporary total disability compensation is not appropriate when a worker sustains a scheduled injury. But similar language taken from chapter 232, Laws of [Kansas] 1927, has been interpreted by the Kansas Supreme Court as not restricting the entitlement to temporary total disability benefits but, instead, prohibiting a pyramiding of benefits. The Kansas Supreme Court has held:

While the language of our statute might have been better framed, its purpose, in our opinion, was solely to prevent the "pyramiding of compensation" — such as an award for both hand and finger when the only injury to the hand was the injury to the finger.⁹

Citing *Thompson*¹⁰, the Kansas Supreme Court added:

"This provision is not applicable to the facts in this case and was enacted to overcome a defect in the old statute allowing double compensation for the same disability, or what has been termed as a pyramiding of compensation. It was held that when compensation was allowed for the loss of a finger, a part of the hand, no compensation could be allowed for the hand which was not otherwise injured. The *language used*, that the allowance was exclusive of all other compensation, *means that it is exclusive for the specific injury*. That is, that the specific loss of the finger

⁹ *Chamberlain v. Bowersock Mills & Power Co.*, 150 Kan. 934, 944, 96 P.2d 684 (1939).

¹⁰ *Thompson v. General Machine & Tool Co.*, 135 Kan. 705, 11 P.2d 685 (1932).

was exclusive of other compensation for that specific loss. For instance, it means that compensation is not allowable for the loss of a leg and also of a foot which was a part of the leg, nor could there be an allowance for the loss of a hand and also the fingers on it. Nor can the loss of a finger for which payment has been made under the schedule be added to the compensation for temporary or permanent disability *for the particular injury of the finger.*"¹¹

Considering the above, the Board concludes an injured worker who sustains a scheduled injury under K.S.A. 44-510d is not precluded from being awarded temporary total disability benefits. Accordingly, the June 12, 2007, Award should be modified in that respect.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.¹² Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board modifies the June 12, 2007, Award, as follows:

Left Shoulder

Gary D. Wilson is granted compensation from Brierton Engineering, Inc., and its insurance carrier for an October 16, 2004, accident and resulting disability. Based upon an average weekly wage of \$469.51, Mr. Wilson is entitled to receive 12.43 weeks of temporary total disability benefits at \$313.02 per week, or \$3,890.84.

For the period ending August 1, 2005, based upon an average weekly wage of \$469.51, Mr. Wilson is entitled to receive 28.71 weeks of permanent partial disability benefits at \$313.02 per week, or \$8,986.80.

For the period commencing August 2, 2005, based upon an average weekly wage of \$517.59, Mr. Wilson is entitled to receive 3.18 weeks of permanent partial disability benefits at \$345.08 per week, or \$1,097.35, for a 15 percent permanent partial disability to the left shoulder, making a total award of \$13,974.99, which is all due and owing less any amounts previously paid.

¹¹ *Chamberlain*, 150 Kan. 934, at 942.

¹² K.S.A. 2006 Supp. 44-555c(k).

Left Forearm

Gary D. Wilson is granted compensation from Brierton Engineering, Inc., and its insurance carrier for an August 1, 2005, accident and resulting disability. Based upon an average weekly wage of \$561.58, Mr. Wilson is entitled to receive 21.72¹³ weeks of temporary total disability benefits at \$374.41 per week, or \$8,132.19, plus 17.83 weeks of permanent partial disability benefits at \$374.41 per week, or \$6,675.73, for a 10 percent permanent partial disability to the left forearm, making a total award of \$14,807.92, which is all due and owing less any amounts previously paid.

Right Forearm

Gary D. Wilson is granted compensation from Brierton Engineering, Inc., and its insurance carrier for an August 1, 2005, accident and resulting disability. Based upon an average weekly wage of \$561.58, Mr. Wilson is entitled to receive 21.72¹⁴ weeks of temporary total disability benefits at \$374.41 per week, or \$8,132.19, plus 17.83 weeks of permanent partial disability benefits at \$374.41 per week, or \$6,675.73, for a 10 percent permanent partial disability to the right forearm, making a total award of \$14,807.92, which is all due and owing less any amounts previously paid.

Right Middle Finger

Gary D. Wilson is granted compensation from Brierton Engineering, Inc., and its insurance carrier for an August 1, 2005, accident and resulting disability. Based upon an average weekly wage of \$561.58, Mr. Wilson is entitled to receive 1.20 weeks of permanent partial disability benefits at \$374.41 per week, or \$449.29, for a four percent permanent partial disability to the right middle finger, making a total award of \$449.29, which is all due and owing less any amounts previously paid.

The record does not contain a written fee agreement between claimant and his attorney. K.S.A. 44-536(b) requires the written contract between the employee and the attorney be filed with the Director for review and approval. Should claimant's counsel desire any fee in this matter, counsel must submit the written agreement to the Judge for approval.

¹³ The weeks of temporary total disability benefits from February 8, 2006, through December 8, 2006, were not separated between the upper extremities. Therefore, the weeks have been evenly divided between the left and right forearm injuries.

¹⁴ The weeks of temporary total disability benefits from February 8, 2006, through December 8, 2006, were not separated between the upper extremities. Therefore, the weeks have been evenly divided between the left and right forearm injuries.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of September, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge